

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

The ALARIS Group, Inc.,

Plaintiff,

Civ. No. 12-446 (RHK/LIB)
ORDER

v.

Disability Management Network, Ltd., *et al.*,

Defendants.

This matter is before the Court *sua sponte*.

Plaintiff The Alaris Group, Inc. (“Alaris”) commenced this action on February 22, 2012, alleging that three of its former employees – Defendants Allison Hanson, Jill Dizack, and Carol Lacke – misappropriated trade secrets when they departed from Alaris and subsequently began working for Defendant Disability Management Network, Ltd., d/b/a TRIUNE Health Group, Ltd. (“TRIUNE”), an Alaris competitor. The Complaint sought damages and injunctive relief prohibiting the disclosure of Alaris’s confidential information.

All Defendants moved to dismiss, noticing their Motions for a hearing before the undersigned on June 25, 2012. The Motions were predicated on Alaris’s purported failure to adequately plead the facts supporting its claims under Bell Atlantic Corp. v. Twombly, 550 U.S. 544 (2007), and Ashcroft v. Iqbal, 556 U.S. 662 (2009). Meanwhile, Alaris moved for expedited discovery “in order to effectively show . . . the extent of its

irreparable harm and Defendants' unlawful conduct in connection with [its] Motion for a Temporary Injunction." (Doc. No. 10 at 2.)¹

On May 3, 2012, the parties appeared before Magistrate Judge Brisbois in connection with the Motion for expedited discovery. In an Order following that hearing, the Magistrate Judge directed the parties to confer and advise the Court, on or before May 14, 2012, whether they would agree to engage in limited expedited discovery. The Magistrate Judge also directed the parties to confer in an attempt to "reach an agreement allowing [Alaris] to file an Amended Complaint obviating the need for the Defendants' separately pending motions to dismiss." (Doc. No. 23.)

On May 14, 2012, the parties jointly filed a letter (Doc. No. 26) in accordance with Judge Brisbois's Order. That letter provided, *inter alia*, that Alaris had forwarded a proposed Amended Complaint to Defendants, who had agreed to "stipulate to the filing of that Amended Complaint, and to withdraw their separately pending motions to dismiss." (Id. at 1.) The Amended Complaint (which is attached to Doc. No. 27 as Ex. A) contains more detail regarding the allegedly misappropriated trade secrets, in an apparent attempt to rectify the original Complaint's (purported) pleading defects. Although Defendants consented to Alaris filing this Amended Complaint, they reserved the right to challenge the claims therein by a "Rule 12 motion *at a later date.*" (Id. (emphasis added).) Based on this letter, therefore, it appeared that an Amended Complaint would be filed shortly, rendering moot the currently pending Motions to Dismiss, and a subsequent motion (or motions) to dismiss might be filed.

¹ No such motion has yet been filed.

Confusingly, however, the letter provided that “this issue remains unresolved.” (*Id.*) Moreover, since submitting the letter, Alaris has neither filed its Amended Complaint nor moved for leave to amend, and Defendants have not withdrawn their Motions to Dismiss. In other words, it appears that the Motions remain live, despite being directed at a Complaint that all parties agree may (and should) be amended.

The Court perceives no reason to resolve the pending Motions and address the viability of the Complaint when amendment is in the offing – an amendment obviously intended to address the very defects pressed by the Motions. Nor does the Court perceive any prejudice to Defendants by permitting amendment at this early stage of the proceedings. Accordingly, and based on all the files, records, and proceedings herein, **IT IS ORDERED:**

1. On or before June 5, 2012, Alaris shall file its Amended Complaint, which is attached to Document Number 27 as Exhibit A;
2. Defendants’ Motions to Dismiss (Doc. Nos. 5, 8) are **DENIED AS MOOT**, and the hearing on the Motions, currently scheduled for June 25, 2012, is **CANCELED**; and
3. This Order is without prejudice to Defendants moving to dismiss the Amended Complaint in accordance with the provisions of Local Rule 7.1(b).

Dated: May 31, 2012

s/Richard H. Kyle
RICHARD H. KYLE
United States District Judge